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Ex Parte Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: CC Docket 95-116; WC Docket 07-149; WC Docket 09-109

Dear Ms. Dortch:

On September 7, 2012, Scott Deutchman, Richard Fruchterman, Michael O'Connor, and Aaron Goldberger of Neustar, Inc., and I met with Julie Veach, Travis Litman, Ann Stevens, William Dever, and Lisa Gelb of the Commission; Sanford Williams, also of the Commission, joined the meeting by telephone. The subject of our presentation was the RFP process for the selection of the Local Number Portability Administrator ("LNPA") at the conclusion of Neustar's current contract. We urged the Bureau to allow the FoNPAC to proceed with the RFP process. We also responded to the August 30, 2012, submission of Ericsson, Inc. ("*Ericsson Letter*"), including Ericsson's attempt to weaken the neutrality requirements reflected in the RFP documents[1] released by the Bureau on August 13, 2012.[2] We explained that there was nothing extraordinary in the neutrality requirements or procedures set out in the *RFP Documents*. To the extent Ericsson has concerns with these neutrality provisions, they are based on Ericsson's own acquisition of Telcordia in January 2012; it should not now be permitted to have the neutrality requirements or the process changed to accommodate its own business decisions.

[1] The RFP documents include a Vendor Qualification Survey ("*VQS*"), a Technical Requirements Document ("*TRD*") and a Request for Proposal ("*RFP*"). Hereinafter, these documents will collectively be referred to as the "*RFP Documents*".

[2] Neustar intends to file comments in response to the Bureau's Public Notice. Neustar will there identify a few areas where clarification of the *RFP Documents* would assist potential bidders.

1. Neutrality Requirements: The *RFP Documents* – including the draft *RFP* and the *VQS* – properly require that any potential bidder meet stringent neutrality criteria as a prerequisite to consideration of its bid to serve as LNPA. The neutrality requirements in the *RFP Documents* are rooted in the statute and the Commission's regulations, including the rules that apply to the North American Numbering Plan Administrator ("NANPA") and the Pooling Administrator ("PA"). The Commission, the North American Numbering Council ("NANC"), and the industry recognize that strict neutrality requirements are essential to ensure that carriers and other service providers that depend on local number portability can provide confidential information to the LNPA with confidence.[3] Impartiality of the LNPA is critical to ensure that consumers and competitors alike benefit from the appearance and the reality of a level competitive playing field. As the LNPA manages the first experience a consumer faces when switching providers, a neutral administrator is essential to ensuring that consumers are able to make such a switch without obstruction in the process, thereby enabling competition. The Commission has repeatedly emphasized the importance of maintaining neutrality in all numbering administration – indeed, the Commission has uniformly included these requirements in the numbering administration contracts that it directly administers.

Ericsson's claim (at 2) that the neutrality requirements reflected in the draft RFP and Vendor Qualification Document "lack . . . clarity" and "go beyond the rules" is not correct. The neutrality provisions contained in the *RFP Documents* are based on existing Commission rules, including the rules contained in 47 C.F.R. § 52.12(a)(1), and existing industry requirements. We do not believe that the industry could, consistent with the Commission's rules and prior orders, adopt less stringent neutrality requirements for the LNPA. In any event, that question is largely beside the point: given that the industry has opted for such neutrality requirements, it would be arbitrary and capricious for the Commission to weaken those requirements, particularly for the convenience of a single bidder. Ericsson's claim (at 2) that the neutrality requirements were "tailored" to the current LNPA is false. To the contrary, Neustar has built *its* business around maintaining neutrality in compliance with the Commission's rules and the requirements of the industry – even though this has meant forgoing other business opportunities.

Ericsson appears to question the requirement that each bidder demonstrate that it is "not involved in a contractual or other arrangement that would impair its ability to administer the NPAC/SMS fairly and impartially." *RFP* § 4.2; *VQS* § 3.4; *see Ericsson Letter* 3 & n.5. But that

[3] *See* First Report and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability*, 11 FCC Rcd 8352, ¶ 92 (1996).

requirement is drawn from neutrality criteria applied in the original LNPA procurements,[4] and is simply one facet of the requirement that bidders not be subject to undue influence – which is a requirement of the Commission's rules as well.

There is likewise nothing new or inappropriate about the requirement that bidders establish their neutrality before the details of their bids are considered. A similar two-step procurement was employed in 1997. The Commission itself appears to have used a similar process in its recent procurement for the NANPA contract by requiring a corporate certification of neutrality to be submitted with a bidder's proposal. The proposed two-step process ensures that the industry will not expend resources evaluating non-qualifying bids and that a non-neutral bidder does not seek to weaken the neutrality requirements later in the selection process. Furthermore, it makes perfect sense for the FoNPAC – as representative of the industry that would be affected by an administrator that lacks impartiality – to evaluate bidders' neutrality.

Moreover, contrary to Ericsson's claim, the RFP process does allow for a neutrality cure period: potential bidders are permitted to submit their *VQS* responses as soon as the Iasta tool is available. The RFP makes clear that any entity rejected on neutrality grounds will be informed of the reason, and can cure by the time proposals are due.[5] At the same time, the neutrality requirements in the *RFP Documents* are not new, and the Commission should reject any attempts to delay the process in an attempt to accommodate a particular bidder that may wish to explore potential corporate restructuring because of its own unrelated corporate acquisition decisions. Given that the *RFP Documents* simply carry forward existing neutrality criteria, all bidders have had ample time to ensure that they are prepared to establish their neutrality. It is critical to the industry, to bidders, and to regulators that the RFP process move forward as scheduled.

2. Undue Influence: Ericsson claims that it is "neutral." While that is a matter for the industry and the Commission to judge in the first instance, we believe that Ericsson's decision to acquire and subsequently to integrate Telcordia raises substantial neutrality issues.

First, Ericsson is likely subject to undue influence from large network-based service providers because of its role as a manufacturer of telecommunications network equipment. Such manufacturers were specifically disqualified from the original 1997 LNPA bidding process because of concerns that large purchasers of network equipment would have the ability to exert

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[4] *See North American Numbering Council, Local Number Portability Administrator Selection Working Group*, April 25, 1997, Section 4.2.2 (available at http://transition.fcc.gov/wcb/cpd/Nanc/lnpastuf.html) ("*Working Group Report*").

[5] *See VQS* § 4.1.

commercial pressure on those manufacturers.[6] Those concerns remain today: to cite two examples, Ericsson recently assisted Sprint in obtaining a $1 billion loan to enable Sprint to purchase Ericsson equipment; T-Mobile recently announced a $4 billion transaction to purchase Ericsson equipment.[7]

Second, Ericsson has contracts and other business arrangements with carriers that impair its ability to act as an impartial administrator. For example, Ericsson and Sprint have entered into a $5 billion, seven-year agreement under which Ericsson has taken over day-to-day management of Sprint's network. As part of that transaction, 6,000 employees transferred from Sprint to Ericsson – including several Sprint employees involved in numbering activities.[8] Ericsson has essentially become Sprint's network alter ego. Such close interdependence makes it very unlikely that Ericsson can plausibly claim that its ability to act as an impartial administrator will not be impaired.

Third, the Commission's rules define the LNPA as "an independent, non-governmental entity, *not aligned with any particular telecommunications industry segment* . . . ." 47 C.F.R. § 52.21(k) (emphasis added). Ericsson's commitment to and dependence on the wireless industry is well known. Given that involvement, Ericsson is unlikely to be able to show that it is not aligned with a "particular telecommunications industry segment."

3. Subcontractor Neutrality: The requirement that any subcontractor also satisfy neutrality requirements is both well established in the numbering-administration context and consistent with general contracting principles. The Commission's rules for the NANPA and PA

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[6] *See Working Group Report*, Section 4.2.2.

[7] *See, e.g.*, *Sprint gets $1 billion credit for Ericsson equipment*, Reuters, May 29, 2012, *available at* http://www.reuters.com/article/2012/05/29/us-sprint-financing-idUSBRE84S0TN20120529; *T-Mobile USA to use Ericsson, Nokia Siemens gear,* Reuters, May 7, 2012, *available at* http://www.reuters.com/article/2012/05/08/tmobileusa-ericsson-nokiasiemens-idUSL1E8G7NOY20120508).

[8] *See Sprint Taps Ericsson to Run Its Network*, Jenna Worthham, The New York Times, July 9, 2009, *available at* http://www.nytimes.com/2009/07/10/technology/companies/10sprint.html and *Sprint gains Network Advantage: Innovative network services deal with Ericsson delivers competitive edge*, July 9, 2009, *available at* http://www.ericsson.com/news/1328069. In 2009, when the Sprint transaction was announced, the Wall Street Journal reported that Ericsson manages 80 fixed and wireless networks serving 275 million subscribers around the world, and 40% of all mobile traffic goes through Ericsson's networks. *See Sprint Signs Deal With Ericsson to Outsource Network Operations*, Roger Cheng, The Wall Street Journal, July 10, 2009, available at http://online.wsj.com/article/SB124715621714118569.html.

apply neutrality requirements to both primary vendors and to subcontractors.[9] Any subcontractor that is involved in day-to-day delivery of LNPA services to the industry must satisfy neutrality requirements. In the absence of such a requirement, a non-neutral vendor could circumvent the neutrality rules by partnering with a neutral prime vendor – which would compromise the core requirement of impartiality in number administration. A subcontractor that is subject to undue influence is just as able to skew performance in a manner that advantages particular entities as the prime vendor. That is why the federal government routinely requires that its organizational conflict of interest rules – analogous to the Commission's neutrality requirements – apply to subcontractors. The Commission should accordingly refuse Ericsson's request to undermine the neutrality requirements in this fashion.

4. Regional Bidding Requirement: Contrary to Ericsson's argument, the RFP should not be structured to require regional bids to be submitted by all prospective vendors. The Commission has already given the industry authority to select one or more vendors for the forthcoming LNPA contract; the selection of an entity or entities to serve as LNPA will be based on the full value of each bidder's proposal, including potential cost and risk of any potential transition. Bidders should be permitted to put their best foot forward in developing a bid that provides the most overall value, whether that involves providing a single nationwide bid or bidding on one or more regions.

The proposed approach in the *RFP Documents* reflects the business realities facing national service providers and service providers serving multiple regions. By having a single NPAC Vendor, the industry and NPAC Users have received the benefit of significant efficiencies in back-office administration and operational processes, especially those service providers that cross geographical boundaries. In addition, the industry has gained significant efficiencies in the contract management of the NPAC itself. By contrast, if national or super-regional service providers are required to interface with multiple LNPAs, they will face a host of challenges and increased costs associated with the need to create, test, and maintain multiple connections; the need to assure disaster recovery and failover testing; the need to coordinate new releases and features; and a host of additional problems associated with administration and coordination. The *RFP* properly enumerates these issues and requires bidders to address them to the extent they propose a multi-vendor solution. As explained by Professor Scott Masten of the University of Michigan Ross School of Business, procurement designs that require awards to more than one vendor would likely increase rather than decrease the cost of NPAC services relative to a sole-

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[9] *See* 47 C.F.R. § 52.12(a)(2).

source, winner-takes-all procurement.[10] The Commission should not require bids that would have such a counter-productive result.

5. URI Fields: Ericsson's arguments regarding the Uniform Resource Identifier ("URI") fields ignore the fact that NPAC URI fields were approved by the NANC's LNPA Working Group and have already been added to the NPAC Master Agreements by the NAPM LLC. After Ericsson (then Telcordia) filed a dispute with the NANC to have certain URI fields removed, the NANC was unable to reach consensus, though a strong majority of the NANC supported inclusion of those fields in the NPAC.[11] There are numerous service providers currently using the URI fields in the NPAC; thereby receiving additional value from the NPAC. The URI fields are included as part of the RFP so that all bidders have the same expectations. Therefore, there is no reason now to stop the RFP from proceeding in order to address Ericsson's URI arguments.

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In conclusion, Neustar urged the Commission to continue to allow the process outlined in May 2011 to continue.[12] All interested parties have been moving forward pursuant to this process and it has been proceeding well. Delaying the process at this point would be counterproductive for the Commission, for the industry, for bidders and for consumers. With the policy issues surrounding neutrality well settled, Neustar requests that the Commission let the FoNPAC move forward with the process.

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[10] *See* Scott E. Masten, *Scale and Transactional Economies in NPAC Services and the Design of Competitive Bidding Procedures*, Nov. 22, 2011, at 4, 10-12, 34, *available at* http://apps.fcc.gov/ecfs/document/view?id=7021748132.

[11] *See, e.g.*, Letter from Betty Anne Kane, Chairman, Public Service Commission of the District of Columbia to Sharon Gillett, Chief, Wireline Competition Bureau, FCC (June 20, 2011), *available at* http://www.nanc-chair.org/docs/mtg_docs/Jun11_NANC_Transmittal_Letter_Telcordia_Dispute.pdf.

[12] *See* Order, *Petition of Telcordia Technologies Inc. To Reform or Strike Amendment 70, To Institute Competitive Bidding For Number Portability Administration and to End the NAPM LLC's Interim Role in Number Portability Administration Contract*, 26 FCC Rcd 6839 (2011).

If you have any questions concerning this matter, please contact me at (202) 326-7921.

Sincerely,
/s/
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